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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,325	05/12/2001	Nemo Semret	61624-04980	7653
25181	7590	06/08/2005	EXAMINER	
FOLEY HOAG, LLP PATENT GROUP, WORLD TRADE CENTER WEST 155 SEAPORT BLVD BOSTON, MA 02110				NGUYEN, NGA B
		ART UNIT		PAPER NUMBER
		3628		

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/854,325	SEMRET ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nga B. Nguyen	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 22 December 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 45-71 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 45-71 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 11/12/04.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This Office Action is the answer to the Amendment filed on December 22, 2004, which paper has been placed of record in the file.
2. Claims 67-71 have been added.

Claims 45-71 are pending in this application.

### ***Response to Arguments/Amendment***

3. Applicant's arguments with respect to claims 45-71 have been considered but are moot in view of the new grounds of rejection.
4. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 45-54 and 58-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al (hereinafter Fisher), U.S. Patent No. 6,243,691, in view of Feezell et al (hereinafter Feezell), U.S. Patent No. 6,253,189.

Regarding to claims 45 and 47, Fisher discloses a method to allocate a product to a buyer agent operating on a buyer server, the method including:

receiving a data message from a first buyer agent, the data message associating a bid with the product (column 6, lines 2-13; the system receives the electronic bid information from a bidder), and

transmitting to the first buyer agent information regarding at least one other bid for the product, the at least one other bid having been received from a second buyer agent (figure 2 and column 6, lines 7-13; the updated catalog page shows the new high bid to any prospective bidders who later access that catalog page);

determining an auction-termination time (figure 2, e.g. "Auction closes on Fri Mar 29, 1996, 1:00 PST);

receiving from the first buyer agent before the auction-termination time in at least some circumstances a data message that has been sent by the first buyer agent in

response to the transmitted information and associated a new bid with the product (column 6, lines 15-35; receiving a new or revised bid via electronic mail from the bidder), and

allocating the product among said buyer agents in accordance with the bids and an allocation rule (column 9, lines 43-column 10, lines 57; allocating the product among bidders in accordance with the bids and an allocation rule such as Standard Auction, Dutch Auction, Progressive Auction).

Fisher does not disclose the product is network resource includes at least one of: a bandwidth, a buffer space, and a processing time. However, Feezell discloses the product is network resource includes at least one of: a bandwidth, a buffer space, and a processing time (see abstract, advertising time slot is equivalent to processing time). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Fisher's to include the network resource in the Fisher's product for the purpose of providing an economical, fair and efficient marketplace for carrying out network resource transactions.

Regarding to claim 46, Fisher discloses receiving a data message at a resource agent operating on a resource server (figure 1 and column 6, lines 60-65; central server host computer 250).

Regarding to claims 48-49, Fisher discloses the buyer agent is associated with a user; and the buyer agent operates on a buyer server located remotely from a computer associated with the user (figure 1 and column 6, lines 60-65; remote terminals 210); the data message based on data provided by the user (column 6, lines 2-5; the bidder

enters the information necessary to place a bid, such as their name and address, bid amount, payment information, etc.).

Regarding to claim 50, Fisher discloses the bid is based on at least one of: a buyer allocation rule for determining an allocation of a network resource; a buyer valuation rule for determining a value of the network resource, and a buyer strategy rule for determining a bid for a network resource based on the buyer allocation rule and the buyer valuation rule (figure 3; see "Bid (price not to exceed)", "Quantity").

Regarding to claims 51 and 52, Fisher does not disclose the bid is based on a truthful best reply strategy, the bid is based on a measurement of the network resource. However, Feezell discloses the bid is based on a truthful best reply strategy and the bid is based on a measurement of the network resource (column 5, lines 38-60). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Fisher's to include the feature above for the purpose of enabling the buyer to make better informed bidding decisions.

Regarding to claim 53, Fisher discloses the allocation rule is identical to the buyer allocation rule (figure 3; see "Bid (price not to exceed)", "Quantity").

Regarding to claim 54, Fisher discloses the allocation rule includes one of: an English Auction allocation rule, a continuous bid-ask allocation rule, a progressive second price action allocation rule, and a hold option allocation rule (column 10, lines 33-57; Progressive Auction).

Regarding to claim 58, Feezell discloses receiving a data message from a seller agent operating on a seller server, the data message associating a network resource

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with an offer to sell (figure 1, trader client A is a seller and column 9, lines 32-40).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Fisher's to include the feature above for the purpose of enabling the seller to offer the network resource for sale over the network.

Regarding to claim 59, Fisher discloses transmitting a data message to the buyer agent including data based on at least one of: an available quantity of the network resource, an allocation of the network resource, a bid from the buyer agent, bid from a different buyer agent, an offer to sell from a seller agent operating on a seller server (figure 2, see "Quantity Available").

Regarding to claims 60-61, Fisher discloses transmitting a data message to the first buyer agent notifying the buyer agent that a bid received from the first buyer agent is less than a bid received from a different buyer agent; receiving a data message from the first buyer agent associating an updated bid with the network resource (column 6, lines 15-35).

Regarding to claim 62, Fisher discloses receiving a data message form the buyer agent associating an allocated network resource with a different buyer agent, and based on the data message, reallocating the allocated network resource to the different buyer agent (column 7, lines 35-42).

Regarding to claim 63, Fisher discloses storing data based on at least one of: an available quantity of a network resource, an allocation of a network resource, a bid form a buyer agent, and an offer to sell from a seller agent operating on a seller server (figure 2, see "Quantity Available").

Regarding to claims 64 and 65, Fisher discloses a system to allocate a product from a resource agent operating on a resource server, the system including:

a buyer server (figure 1 and column 6, lines 60-65; remote terminals 210); and

a first buyer agent operating on the buyer server, the buyer agent capable of:

generating a bid for the product (column 6, lines 2-6; the bidder enters the information necessary to place a bid);

transmitting a data message to the resource server, the data message associating a bid with the product (column 6, lines 2-13; the system receives the electronic bid information from a bidder);

receiving information regarding at least one other bid for the product, the at least one other bid having been received from a second buyer agent (figure 2 and column 6, lines 7-13; the updated catalog page shows the new high bid to any prospective bidders who later access that catalog page);

transmitting in some circumstances in response to the received information a data message that associate a new bid with the product (column 6, lines 15-35; receiving a new or revised bid via electronic mail from the bidder); and

receiving an allocation of the product from the resource agent ((column 9, lines 43-column 10, lines 57; allocating the product among bidders in accordance with the bids and an allocation rule such as Standard Auction, Dutch Auction, Progressive Auction).

Fisher does not disclose the product is network resource includes at least one of: a bandwidth, a buffer space, and a processing time. However, Feezell discloses the

product is network resource includes at least one of: a bandwidth, a buffer space, and a processing time (see abstract, advertising time slot is equivalent to processing time). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Fisher's to include the network resource in the Fisher's product for the purpose of providing an economical, fair and efficient marketplace for carrying out network resource transactions.

Regarding to claim 66, Fisher discloses the buyer agent is capable of generating a bid for a network resource based on at least one of: a buyer allocation rule for determining an allocation of a network resource; a buyer valuation rule for determining a value of the network resource, and a buyer strategy rule for determining a bid for a network resource based on the buyer allocation rule and the buyer valuation rule (figure 3; see "Bid (price not to exceed)", "Quantity").

Regarding to claim 67, Fisher discloses the new bid is based on at least one of: a buyer allocation rule for determining an allocation of a network resource; a buyer valuation rule for determining a value of the network resource, and a buyer strategy rule for determining a bid for a network resource based on the buyer allocation rule and the buyer valuation rule (figure 3; see "Bid (price not to exceed)", "Quantity").

Regarding to claims 68 and 69, Fisher discloses a method to allocate a product to at least one buyer agent operating on at least one buyer server, the method including:  
receiving from the at least one buyer agent a corresponding data message, the corresponding data message associating a bid with the product (column 6, lines 2-13; the system receives the electronic bid information from a bidder), and

allocating the product among the at least one buyer agent in accordance with an allocation rule such that there is at least some combination of bids in respect of which the allocation rule divides the product more than on buyer agent (column 9, lines 43-column 10, lines 57; allocating the product among bidders in accordance with the bids and an allocation rule such as Standard Auction, Dutch Auction, Progressive Auction).

Fisher does not disclose the product is network resource includes at least one of: a bandwidth, a buffer space, and a processing time. However, Feezell discloses the product is network resource includes at least one of: a bandwidth, a buffer space, and a processing time (see abstract, advertising time slot is equivalent to processing time). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Fisher's to include the network resource in the Fisher's product for the purpose of providing an economical, fair and efficient marketplace for carrying out network resource transactions.

Regarding to claim 70, Fisher discloses each corresponding bid is based on at least one of: a buyer allocation rule for determining an allocation of a network resource; a buyer valuation rule for determining a value of the network resource, and a buyer strategy rule for determining a bid for a network resource based on the buyer allocation rule and the buyer valuation rule (figure 3; see "Bid (price not to exceed)", "Quantity").

Regarding to claim 71, Fisher discloses the allocation rule includes one of: an English Auction allocation rule, a continuous bid-ask allocation rule, a progressive second price action allocation rule, and a hold option allocation rule (column 10, lines 33-57; Progressive Auction).

7. Claims 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al (hereinafter Fisher), U.S. Patent No. 6,243,691, in view of Feezell et al (hereinafter Feezell), U.S. Patent No. 6,253,189, and further in view of Roth, U.S. Patent No. 6,285,987.

Regarding to claims 55 and 57, Fisher and Feezell do not disclose allocating includes: generating at least one command based on a resource control protocol for allocating the network resource and generating at least one command for at least one device for controlling the network resource. However, Roth discloses allocating includes: generating at least one command based on a resource control protocol for allocating the network resource (column 8, lines 15-20; Internet Protocol), generating at least one command for at least one device for controlling the network resource (column 4, lines 42-43; the advertising web server system 16 sends the appropriate advertisement from database 16A to the browser 11). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Fisher's modified by Feezell to adopt the teaching of Roth for the purpose of enabling the allocation of network resource.

Regarding to claim 56, Fisher, Feezell and Roth do not disclose allocating includes generating at least one command based on one of SNMP and COPS for allocating the network resource. However, generating at least one command based on one of Simple Network Management Protocol (SNMP) and Common Open Policy Service Protocol (COPS) for allocating the network resource is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the

invention was made to modify Fisher's modified by Feezell's and Roth's above to adopt the well known feature above for the purpose of allocating the network resource using various different protocols.

***Conclusion***

8. Claims 45-71 are rejected.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Thursday from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on (571) 272-6799.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 306-1113.

10. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
C/o Technology Center 3600  
Washington, DC 20231

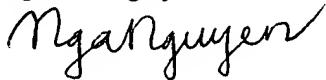
Or faxed to:

(703) 872-9306 (for formal communication intended for entry),  
or

(571) 273-0325 (for informal or draft communication, please label  
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Knox Building, 501 Dulany  
Street, Alexandria, VA, First Floor (Receptionist).

Nga B. Nguyen



March 28, 2005